

July 20, 2005

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Application for Exception

Name of Petitioner: Grace Energy Corporation

Date of Filing: October 20, 2004

Case Number: TEE-0014

On October 20, 2004, Grace Energy Corporation (Grace) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy. In its Application, Grace requests that it be relieved of the requirement to prepare and file the Energy Information Administration's (EIA) form entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report" (Form EIA-782B). As explained below, we have determined that the Application for Exception should be granted.

A. *Background*

The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. The current form collects information concerning the volume and price of various grades and types of motor gasoline, No. 2 distillates, propane, and residual fuel oil, broken down by customer type.

Information obtained from the survey is used to analyze trends within petroleum markets. Summaries of the information and the analyses are published by the EIA in publications such as "Petroleum Marketing Monthly." This data is used by Congress and by more than 35 state governments to project trends and to formulate state and national energy policies. In addition, firms in the petroleum industry frequently base business decisions on the data published by the EIA.

The EIA has attempted to ensure that its surveys yield valuable information while minimizing accompanying burdens. In designing the form, EIA consulted with potential survey respondents, various industry associations, users of the energy data, state governments, and other federal agencies in order to determine the least burdensome ways in which to elicit data. To further minimize the reporting burden, the EIA does not require

all industry businesses to report continuously. Instead, individual firms are periodically selected at random to file the report for limited periods.^{1/} In addition, to reduce the amount of time spent completing the forms, firms may rely upon reasonable estimates.^{2/}

B. *Exceptions Criteria*

Form EIA-782B is a mandatory report designed to collect monthly information on refined petroleum sales volumes and prices from a sample of resellers and retailers. 42 U.S.C. § 7135(b). This Office has authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens." 42 U.S.C. § 7194 (a); 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms. Thus, mere inconvenience does not constitute a sufficient hardship to warrant relief. *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

In considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. See *Champlain Oil Co., Inc.*, 14 DOE ¶ 81,022 (1986); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986). This entails balancing any burden the firm may encounter in meeting its reporting requirement against the public interest in collecting reliable information concerning energy markets upon which public decisions may be based. Neither the fact that a firm is relatively small, nor the fact that it has filed the report for a number of years, alone constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable. *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

^{1/} Firms that account for over five percent of the sales of any particular product in a state are always included in the sample of firms required to file the report. A random sample of other firms is also selected. This random sample changes approximately every 24-30 months, but a firm may be reselected for a subsequent sample. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

^{2/} Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data. Firms may contact EIA to establish a method of estimation satisfactory to both parties. Toll-free numbers are provided in the General Instructions of the EIA forms.

However, exceptions from the EIA form requirements have been granted in cases of compelling financial difficulties, the sudden unavailability of key personnel, unexpected business interruptions or combinations of these factors.^{3/}

C. *Grace's Exception Application*

In the Application for Exception, Brent H. Smith, Comptroller of Grace, requests relief from the EIA reporting requirement because of the illness of one office employee and the increased burdens on the remaining employees of the firm's ordinary business operations. Application at 1.

We are a small company and must cut overhead expenses in an extreme way to remain profitable in our highly competitive fuel market. As a result our office staff runs very lean. Since our computer reporting is limited when preparing the EIA-782B report, preparing the report takes a significant amount of time.

The form preparation time is very significant and burdensome under normal circumstances, but when other events out of our control come along, we simply have a very difficult time preparing this detailed information for the Department of Energy.

One such event has come along recently and challenged our ability to keep the office work completed. Specifically, an office employee of ours has developed lung cancer within the last 30 days. Though he wants to work (and does as much as he can), we must all pitch in and cover for any of his uncompleted work during his absences. This leaves no time for extra reporting.

Id.

^{3/}*Little River Village Campgrounds, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (1994) (three month extension of time to file report granted when two office employees simultaneously on maternity leave); *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994); *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years.); *S & S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy); *Belcher Oil Co.* 15 DOE ¶ 81,018 (1987) (extension of time granted where general manager abruptly left firm without notice); *Eastern Petroleum Corp.* 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by instillation of a new computer system left firm's records inaccessible); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane).

D. *Analysis*

In the past, we have granted exception relief when a firm has demonstrated that the reporting requirement imposes an unusual burden on the firm or could seriously impede the firm's business operations. For example, as noted above, in *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (1994), we granted a three month extension of time to file Form EIA-782B when two of its office employees were simultaneously on maternity leave. Our review of the information presented in the Application for Exception submitted by Grace leads us to conclude that there is considerable merit to Grace's contention that it is currently significantly more burdened by the reporting requirement than similarly situated respondents. Clearly, with an ill employee, Grace's remaining employees are barely sufficient to meet the firm's normal workday tasks.

We conclude that the burden placed upon Grace at this time, due to the unavailability of personnel to complete the form, is greater than that encountered by other firms required to complete Form EIA-782B. Accordingly, Grace should be granted relief from its obligation to file Form EIA-782B for the remainder of the selection period.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Grace Energy Corporation, Case No. TEE-0014, is hereby granted to the extent set forth in paragraph (2) below.
- (2) Notwithstanding the instructions to Form EIA-782B, Grace Energy Corporation shall not be required to file reports to the Energy Information Administration for the remainder of the selection period.
- (3) This is a final Order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: July 20, 2005